

funding; *i.e.*, not the direct result of a contract or agreement with persons supplying items to a procuring agency or providing support services that include the supply or use of items.

(e) *Exemptions.* The following applications are exempt from the preferred procurement requirements of this part:

(1) Military equipment: Products or systems designed or procured for combat or combat-related missions.

(2) Spacecraft systems and launch support equipment.

[71 FR 42575, July 27, 2006, as amended at 73 FR 27953, May 14, 2008]

#### § 2902.4 Procurement programs.

(a) *Integration into the Federal procurement framework.* The Office of Federal Procurement Policy, in cooperation with USDA, has the responsibility to coordinate this policy's implementation in the Federal procurement regulations. These guidelines are not intended to address full implementation of these requirements into the Federal procurement framework. This will be accomplished through revisions to the Federal Acquisition Regulation.

(b) *Federal agency preferred procurement programs.* (1) On or before January 11, 2006, each Federal agency shall develop a procurement program which will assure that items composed of biobased products will be purchased to the maximum extent practicable and which is consistent with applicable provisions of Federal procurement laws. Each procurement program shall contain:

(i) A preference program for purchasing designated items,

(ii) A promotion program to promote the preference program; and

(iii) Provisions for the annual review and monitoring of the effectiveness of the procurement program.

(2) In developing the preference program, Federal agencies shall adopt one of the following options, or a substantially equivalent alternative, as part of the procurement program:

(i) A policy of awarding contracts to the vendor offering a designated item composed of the highest percentage of biobased product practicable except when such items:

(A) Are not available within a reasonable time;

(B) Fail to meet performance standards set forth in the applicable specifications, or the reasonable performance standards of the Federal agency; or

(C) Are available only at an unreasonable price.

(ii) A policy of setting minimum biobased products content specifications in such a way as to assure that the biobased products content required is consistent with section 9002 of FSRIA and the requirements of the guidelines in this part except when such items:

(A) Are not available within a reasonable time;

(B) Fail to meet performance standards for the use to which they will be put, or the reasonable performance standards of the Federal agency; or

(C) Are available only at an unreasonable price.

(3) In implementing the preference program, Federal agencies shall treat as eligible for the preference biobased products from "designated countries," as that term is defined in section 25.003 of the Federal Acquisition Regulation, provided that those products otherwise meet all requirements for participation in the preference program.

(c) *Procurement specifications.* After the publication date of each designated item, Federal agencies that have the responsibility for drafting or reviewing specifications for items procured by Federal agencies shall ensure within a specified time frame that their specifications require the use of designated items composed of biobased products, consistent with the guidelines in this part. USDA will specify the allowable time frame in each designation rule. The biobased content of a designated item may vary considerably from product to product based on the mix of ingredients used in its manufacture. In procuring designated items, the percentage of biobased product content should be maximized, consistent with achieving the desired performance for the product.

[70 FR 1809, Jan. 11, 2005, as amended at 71 FR 42575, July 27, 2006]

#### § 2902.5 Item designation.

(a) *Procedure.* Designated items are listed in subpart B. In designating

## § 2902.6

items, USDA will designate items composed of generic groupings of specific products and will identify the minimum biobased content for each listed item. As items are designated for procurement preference, they will be added to subpart B. Items are generic groupings of specific products. Products are specific products offered for sale by a manufacturer or vendor. Although manufacturers and vendors may submit recommendations to USDA for future item designations at any time, USDA does not have a formal process for such submissions or for responding to such submissions.

(b) *Considerations.* In designating items, USDA will consider the availability of such items and the economic and technological feasibility of using such items, including life cycle costs. USDA will gather information on individual products within an item and extrapolate that product information to the item level for consideration in designating items. In considering these factors, USDA will use life cycle cost information only from tests using the BEES analytical method.

(c) *Exclusions.* (1) Motor vehicle fuels and electricity are excluded by statute from this program.

(2) USDA additionally will not designate items for preferred procurement that are determined to have mature markets. USDA will determine mature market status by whether the item had significant national market penetration in 1972.

### § 2902.6 Providing product information to Federal agencies.

(a) *Informational Web site.* An informational USDA Web site implementing section 9002 can be found at: <http://www.biobased.oce.usda.gov>. USDA will maintain a voluntary Web-based information site for manufacturers and vendors of designated items produced with biobased products and Federal agencies to exchange product information. This Web site will provide information as to the availability, relative price, biobased content, performance and environmental and public health benefits of the designated items. USDA encourages manufacturers and vendors to provide product, business contacts, and product information for designated

## 7 CFR Ch. XXIX (1–1–10 Edition)

items. Instructions for posting information are found on the Web site itself. USDA also encourages Federal agencies to utilize this Web site to obtain current information on designated items, contact information on manufacturers and vendors, and access to information on product characteristics relevant to procurement decisions. In addition to any information provided on the Web site, manufacturers and vendors are expected to provide relevant information to Federal agencies, upon request, with respect to product characteristics, including verification of such characteristics if requested.

(b) *Advertising, labeling and marketing claims.* Manufacturers and vendors are reminded that their advertising, labeling, and other marketing claims, including claims regarding health and environmental benefits of the product, must conform to the Federal Trade Commission Guides for the Use of Environmental Marketing Claims, 16 CFR part 260.

### § 2902.7 Determining biobased content.

(a) *Certification requirements.* For any product offered for preferred procurement, manufacturers and vendors must certify that the product meets the biobased content requirements for the designated item within which the product falls. Paragraph (c) of this section addresses how to determine biobased content. Upon request, manufacturers and vendors must provide USDA and Federal agencies information to verify biobased content for products certified to qualify for preferred procurement.

(b) *Minimum biobased content.* Unless specified otherwise in the designation of a particular item, the minimum biobased content requirements in a specific item designation refer to the biobased portion of the product, and not the entire product.

(c) *Determining biobased content.* Verification of biobased content must be based on third party ASTM/ISO compliant test facility testing using the ASTM International Radioisotope Standard Method D 6866. ASTM International Radioisotope Standard Method D 6866 determines biobased content based on the amount of biobased carbon in the material or product as percent of the weight (mass) of the total